

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BREEZE MEDICAL EQUIPMENT, INC.,)
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 Plaintiff,)
)
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 v.) No. 07 C 673
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)
COMPANION HEALTH SERVICES, INC.,)
)
)
 Defendant.)

MEMORANDUM ORDER

Companion Health Services, Inc. ("Companion") has filed its Amended Answer, Affirmative Defenses and Counterclaim to the Complaint brought against it by Breeze Medical Equipment, Inc. ("Breeze"). Because that responsive pleading has raised a potential subject matter jurisdictional question that had not emerged from the earlier pleadings, this memorandum order is issued *sua sponte* to direct the parties to address that question (Cook v. Winfrey, 141 F.3d 322, 325 (7th Cir. 1998) is among the host of authorities that emphasize the federal courts' obligation to look at federal subject matter jurisdiction in the first instance and, if need be, to do so *sua sponte*).

Although Breeze's Complaint ¶4 seeks to invoke Lanham Act §39 (15 U.S.C. §1121(a)) as a putative source of federal-question jurisdiction, the substantive allegations of the Complaint appear to make that contention problematic at best. Complaint ¶5 advances the claimed diversity of citizenship as an alternative jurisdictional ground, and it is that allegation that has been

placed in question by Companion's current response. In that regard Amended Answer ¶1 asserts in part:

Answering further, CHS is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, except it states that Breeze is not listed as an active corporation on the Kansas Secretary of State's web site and, on that basis, denies Breeze is a Kansas corporation.

If Breeze is indeed not a Kansas corporation, the presence or absence of the required diversity is an uncertain proposition. Accordingly Breeze is ordered to file an appropriate statement covering its corporate existence (or the lack of it) on or before April 24, 2007. If for any reason it turns out that Breeze is not (or was not at the time it filed this action) a corporation, that new filing must identify the relevant citizenship for diversity purposes so that this Court can determine whether federal jurisdiction does or does not exist.



Milton I. Shadur
Senior United States District Judge

Date: April 11, 2007